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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

PURPLE MOUNTAIN TRUST, Individually  
and on Behalf of All Others Similarly Situated,

Case No. 3:18-cv-03948-JD

Plaintiff,

vs.

WELLS FARGO & COMPANY, TIMOTHY  
J. SLOAN, JOHN R. SHREWSBERRY,  
STEPHEN SANGER, and MARY MACK,

Defendants.

**STEPHEN SANGER'S REPLY IN  
SUPPORT OF MOTION TO DISMISS  
THE CONSOLIDATED COMPLAINT  
FOR VIOLATION OF THE FEDERAL  
SECURITIES LAWS**

Hearing Date: February 28, 2019  
Hearing Time: 10:00 a.m.  
Judge: Hon. James Donato  
Courtroom: 11, 19th Floor

1 Plaintiff's Opposition fails to adequately respond to the issues raised in Defendant  
 2 Stephen Sanger's Motion to Dismiss ("Sanger Motion") regarding (1) the alleged falsity of  
 3 Sanger's challenged statements and (2) his lack of scienter. (Sanger Mot., ECF No. 59; Opp'n,  
 4 ECF No. 63.)<sup>1</sup>

5 *First*, the Sanger Motion showed that Sanger's three challenged statements updated Wells  
 6 Fargo's investors about the Sales Practice Investigation. Because those statements did not state or  
 7 imply anything about the CPI issue, they were not false or misleading. (Sanger Mot. at 2; Wells  
 8 Fargo's Mot. to Dismiss at 9-10, 12-15, ECF No. 55.) Plaintiff's Opposition does not respond to  
 9 any of Sanger's specific points. It instead asserts generally that the Sales Practice Investigation  
 10 was "touted as 'a comprehensive independent investigation' that 'describes everything to date.'"<sup>2</sup>  
 11 (Opp'n at 3, 7.) Sanger never made such a statement. Excised language from the 2017 Proxy  
 12 explicitly describes the investigation as being only about the Sales Practice Investigation—"a  
 13 comprehensive independent investigation *into our Company's retail banking sales practices and*  
 14 *related matters.*" (Compl. ¶ 85, ECF No. 46.) And nowhere in the Proxy did Sanger (or any  
 15 Defendant) claim to "describe[] everything to date." Those words come from Shrewsberry's  
 16 March 20, 2017 statement made in response to a request for an update on the Sales Practice  
 17 Investigation. (*Id.* ¶ 91.)<sup>3</sup>

18 *Second*, with respect to scienter, the Opposition mischaracterizes the Complaint's  
 19 allegations about who received the Wyman Report. (Opp'n at 24-26.) Plaintiff argues that the  
 20 results of an internal investigation into the CPI issue were presented to the Board "by September  
 21 2016," (Opp'n at 2, 19, 24), but the Complaint makes no such allegations about what specifically  
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23 <sup>1</sup> Capitalized terms have the same definition as set forth in the Sanger Motion, unless  
 24 otherwise defined.

25 <sup>2</sup> The Opposition also points to statements other defendants allegedly made about the  
 26 Board's investigation, *e.g.*, "leav[ing] no stone unturned," "looking at all of our businesses," and  
 27 having "voluntarily commissioned reviews [plural] of really the rest of Wells Fargo." (Opp'n at  
 28 19-20.) Sanger made none of those statements.

29 <sup>3</sup> The Opposition also fails to explain how Sanger's statements about restoring trust, made  
 30 in connection with the Sales Practice Investigation, were objectively verifiable or false, even if  
 31 Sanger had some knowledge of the CPI issue. (Opp'n at 20-23; Sanger Mot. at 2 n.1; Wells  
 32 Fargo's Mot. to Dismiss at 15-18.)

1 was escalated to the Board regarding the CPI issue. Indeed, the allegations Plaintiff cites in  
 2 support of that argument do not mention Sanger or the Board receiving any results of an internal  
 3 investigation. (Compl. ¶¶ 155-162.) Still, even if Sanger had some knowledge of the CPI issue,  
 4 Plaintiff fails to demonstrate how it would put Sanger on notice that his challenged statements  
 5 regarding the Sales Practice Investigation were in any way false or misleading. (Sanger Mot. at  
 6 2-3; Wells Fargo's Mot. to Dismiss at 20-24.)<sup>4</sup> Finally, as to Plaintiff's "core operations"  
 7 argument, that inference, if applicable at all, principally concerns "management's" knowledge,  
 8 not outside directors like Sanger. *S. Ferry, LP, No. 2 v. Killinger*, 542 F.3d 776, 781, 786 (9th  
 9 Cir. 2008) (absent detailed and specific allegations about actual knowledge, "core operations"  
 10 facts must be so apparent that it would be "absurd" to suggest that *management* was without  
 11 knowledge of the matter" (emphasis added)).

12 For the reasons discussed in the Sanger Motion and Wells Fargo's Motion to Dismiss,  
 13 Plaintiff's claims against Sanger should be dismissed with prejudice.

14 Dated: January 25, 2019

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24 <sup>4</sup> Because Plaintiff fails to connect Sanger's retirement from the Board with the CPI issue  
 25 and does not provide any evidence of wrongdoing by Sanger, (Opp'n at 29), Plaintiff cannot  
 26 plead scienter based on his resignation. *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1062-63  
 27 (9th Cir. 2014) (departures of executives did not support inference of scienter where plaintiffs  
 28 failed to connect the departures with the problems at issue); *In re Downey Sec. Litig.*, No. CV 08-  
 3261-JFW (RZx), 2009 WL 2767670, at \*13 (C.D. Cal. Aug. 21, 2009) (resignation or  
 termination provides evidence of scienter "only when it is accompanied by additional evidence of  
 the defendant's wrongdoing," such as resigning specifically to avoid cooperating with an internal  
 investigation); *Shenwick v. Twitter, Inc.*, 282 F. Supp. 3d 1115, 1148 (N.D. Cal. 2017) (departures  
 "accompanied by additional evidence of [D]efendant[s'] wrongdoing," namely witness statements  
 attributing the departures to the problems at issue, contributed to finding of scienter (citation  
 omitted)).